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TO THE
HOUSE COMMITTEE ON JUDICIARY
THE TWENTY-EIGHTH STATE LEGISLATURE
REGULAR SESSION OF 2015

March 31, 2015
2:05 p.m.

TESTIMONY ON S.B. NO. 756, S.D. 1, H.D. 1
RELATING TO THE SECURE AND FAIR ENFORCEMENT
FOR MORTGAGE LICENSING ACT

THE HONORABLE KARL RHOADS, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Iris Ikeda, Commissioner of Financial Institutions ("Commissioner"),
testifying on behalf of the Department of and Consumer Affairs ("Department") on
Senate Bill No. 756, S.D. 1, H.D. 1. The Department offers the following comments.

Senate Bill No. 756, S.D.1, H.D. 1 would exempt from Chapter 454F, Hawaii
Revised Statutes (the Secure and Fair Enforcement for Mortgage Licensing Act or
"SAFE Act"), a seller of real property who offers or negotiates the terms of a residential
mortgage loan secured by the seller's own real property, and, in addition to other

requirements, would mandate that the seller provide the buyer with a document that indicates the loan amount, payment schedule, and the consequences of default.

The SAFE Act regulates persons who make mortgage loans, which are complex financial transactions that typically bind a buyer to pay a mortgagee hundreds of thousands of dollars over fifteen to thirty years, with the loan secured by the buyer's home or other real property. A home loan made by a person who is exempt from the SAFE Act may involve no evaluation of whether the borrower has the ability to repay the loan, no disclosures of fees and terms that would help the borrower understand financial ramifications, and no standard loan documentation or federally mandated disclosures to inform and protect consumers.

The Department suggests that the proposed SAFE Act exemption be drafted in a manner that provides prospective borrowers with important information about the mortgage transaction. Specifically, the Department suggests the following revision on page 3 lines 18-20:

The seller shall provide the buyer a written document with the loan amount, payment schedule, and consequences of default, containing the same information as the Loan Estimate Form developed by the Consumer Financial Protection Bureau.

The Consumer Financial Protection Bureau ("CFPB") Loan Estimate Form was developed to be a plain language form so that consumers can understand their mortgage loan transaction. The CFPB says that the Loan Estimate makes it easier for mortgage shoppers to understand loan costs and make an informed decision about the commitment involved in a mortgage loan. The same information would help a buyer understand his or her financing transaction with a seller. The CFPB Loan Estimate

Form is available for use on its website. See,

<http://www.consumerfinance.gov/regulatory-implementation/tila-respa/>, for a blank

model Loan Estimate Form, and samples of completed Loan Estimate Forms.

Thank you for the opportunity to provide these comments and proposed amendment. I would be pleased to respond to any questions you may have.

March 31, 2015

The Honorable Karl Rhoads
House Committee on Judiciary
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: S.B. 756, S.D.1, H.D.1, Relating to the Secure and Fair Enforcement for Mortgage Licensing Act

HEARING: Tuesday, March 31, 2015, at 2:05 p.m.

Aloha Chair Rhoads, Vice-Chair San Buenaventura and Members of the Committee:

I am Myoung Oh, Director of Government Affairs, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,400 members. HAR **strongly supports S.B. 756, S.D.1, H.D.1**. This measure restores a mortgage license exemption for sellers of real property who offer or negotiate terms of a residential mortgage loan secured by the seller's own real property for which the seller is the mortgagee. It provides that the seller is a person, estate, or trust who provides three or fewer mortgage loans in one calendar year and the interest is not above the State's usury limit, and that the seller is required to provide the buyer a written document with the loan amount, payment schedule, and consequences of default.

The Legislature amended Hawaii's Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act) through Act 198, Session Laws of Hawai'i 2014. This amendment to the SAFE Act became effective July 1, 2014 and in part, removed exemptions that allowed ordinary, non-licensed property owners to provide owner financing to family members or other purchasers of their own property.

Act 198 has a significant negative impact upon residential real estate in Hawaii. Owner financing (often referred to as a Purchase Money Mortgage) is a useful tool in the credit market, as it expands the pool of potential buyers for owners and provides buyers an effective financing option in addition to traditional mortgage lending. Owner financing is also an attractive alternative for sellers who have equity in excess of \$500,000 for couples and \$250,000 for single person as it may enable a Seller to legally spread out the tax consequences over time.

In 2014, there were 169 residential seller financing transactions. Since 2008, there were a total of 966 residential seller financing transactions. While these transactions may not seem like a lot compared to traditional institutional transactions, these successful transactions have

enabled a significant number of Hawaii consumers to enjoy the benefits of home ownership. Owner financing appears to have provided very positive results with little evidence of harm or risk to consumers. Furthermore, consumers have the traditional and very effective legal option of asserting claims for misrepresentation or fraud should they believe they have been harmed.

In terms of conformance with the SAFE Act, the Consumer Financial Protection Bureau (CFPB) implemented regulations which exclude from the definition of loan originator some sellers who provide seller financing. CFPB has provided some flexibility in the new final rule by excluding from the definition of loan originator two categories of seller financing: those that sell 3 or fewer properties in any 12 month period and those that sell only one in any 12 month period.

While it is important to reaffirm that the majority of these transactions are successful between buyers and sellers, we continue to strongly support S.B. 756, S.D.1, H.D.1 which is in alignment with the CFPB and the Truth In Lending Act (TILA).

Mahalo for the opportunity to testify in support and request the committee's favorable passage.

MSL XX.XXX.040 LICENSE AND REGISTRATION REQUIRED—

(1) IN GENERAL—An individual, unless specifically exempted from this Act under subsection (3) of this section, shall not engage in the business of a mortgage loan originator with respect to any dwelling located in this State without first obtaining and maintaining annually a license under this Act. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(2) EFFECTIVE DATE [To be used in states without mortgage loan originator licensing as of July 30, 2008]—In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, the effective date for subsection (1) of this section shall be July 31, 2010, or such later date approved by the Secretary of the U.S. Department of Housing and Urban Development, pursuant to the authority granted under Public Law 110-289, Section 1508(a).

OR

(2) EFFECTIVE DATE [To be used in states with mortgage loan originator licensing as of July 30, 2008]—In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, the effective date for subsection (1):

(a) For all individuals other than individuals described in subsection (b) shall be July 31, 2010, or such later date approved by the Secretary of the U.S. Department of Housing and Urban Development, pursuant to the authority granted under Public Law 110-289, Section 1508(a).

(b) For all individuals licensed as mortgage loan originators as of the enactment of this Act shall be January 1, 2011, or such later date approved by the Secretary of the U.S. Department of Housing and Urban Development, pursuant to the authority granted under Public Law 110-289, Section 1508(a).

(3) EXEMPTION FROM THIS ACT—The following are exempt from this Act:

(a) Registered Mortgage Loan Originators, when acting for an entity described in MSL XX.XXX.030(10)(a)(i), (ii) or (iii) are exempt from this Act.

(b) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual.

(c) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence.

(d) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator.

(4) INDEPENDENT CONTRACTOR LOAN PROCESSORS OR UNDERWRITERS—A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless such independent contractor loan processor or underwriter obtains and maintains a license under MSL XX.XXX.040(1). Each independent contractor loan processor or underwriter licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.